

ORIGINAL

ORIGINAL

LAW OFFICES  
**BROWN NIETERT & KAUFMAN, CHARTERED**  
SUITE 817

2000 L STREET, N.W.  
WASHINGTON, D.C. 20036

TEL (202) 887-0600  
FAX (202) 457-0126

October 21, 2002

RECEIVED

OCT 22 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation;  
WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this notice is being filed. On Monday, October 21, 2002, Mark J. Abrams of Mobile Relay Associates ("MRA") and I met with Samuel Feder, Senior Adviser to Commissioner Martin, regarding the above-referenced proceeding.

During the meeting, MRA provided copies of its Comments filed in this proceeding on September 23, 2002, upon the so-called "Consensus Plan". MRA also discussed its interest in and position on the issues as set forth in the attached summary.

An original and one copy of this letter are submitted for inclusion in the file of the above-referenced proceeding. Please direct any questions to the undersigned.

Sincerely,



David J. Kaufman

Enclosure

cc: Samuel Feder  
Mobile Relay Associates

at 1

## THE 800 MHZ INTERFERENCE ISSUE

### The Issue

The FCC has issued a Notice of Proposed Rulemaking that seeks to resolve the interference caused to public safety and industrial licensees in the 800 MHz band by Nextel (and maybe also from other digital cellular systems). NOTE: Incumbent high-site analog SMR is not a source of interference, Nor is Southern Linc's primarily high-site digital system a source of interference.

Nextel's new "consensus plan" is to force incumbent licensees and non-Nextel auction winners on channels 1-120 (part of the former General Category band) to assign their licenses to Nextel "temporarily" with the goal of Nextel one day further assigning those licenses to Public Safety.

### Mobile Relay Associates' Interest

Mobile Relay Associates is a privately-held high-site analog 800 MHz SMR licensee in Colorado, as well as an **AMTA** board member.

**MRA** causes no interference. MRA would be forced to relocate without reimbursement under Nextel's plan.

MRA previously held 800 MHz spectrum in California, which it sold to Nextel, migrating its 800 MHz customers there to the bands below 512 MHz. MRA suffered substantial disruption there, and suffered substantial customer churn to Nextel. Based upon this experience, MRA believes that any 800 MHz forced rebanding would cause approximately half its 800 MHz customers in Colorado to chum over to Nextel. Such a sudden chum, if not compensated, will put MRA out of business.

### Summary of Position

The "consensus plan" does not represent a consensus. It includes only those who benefit (Nextel and some Public Safety), and those who need not relocate (I/LT, non-SMR Business Radio).

Unless the "consensus plan" were to reimburse innocent licensees such as MRA for all damages caused by forced relocation, including loss of customer base, the "consensus plan" would be unconstitutional under the Fifth Amendment.

Because outside funding, not available from Nextel, is needed to cover this compensation to incumbents, the "consensus plan" cannot be implemented unless and until there is legislation appropriating such funds. Thus, the "consensus plan" fails to eliminate the need for legislation.

**As** the quid pro quo for its support, Nextel would receive a windfall of spectrum far more valuable than the spectrum it holds today. This amounts to paying blackmail to Nextel.

The General Category channels at issue are contiguous spectrum. They were originally allocated for Private Radio generally, but were re-allocated to SMR precisely because, according to the FCC's decision, (1) the band already was 75% occupied by SMR, and (2) the contiguous nature of the channels made them suitable for eventual digital-cellular use. The FCC then sold these same channels at auction for hundreds of millions of dollars on the promise they were SMR channels and usable either as analog/ high-site or digital/cellular.

Nextel's dispatch competitors are in this band; conveniently for Nextel, this plan totally disrupts its dispatch competition.

### **The Better Approach**

Given the number of conflicting proposals currently before the FCC, the agency should ensure that a proper record is developed on the scope of the problem, and the costs and complexities of the various proposals, before adopting a solution. In the meantime, interim technical solutions ("Best Practices") should be quickly codified in the Commission's Rules.

- Re-banding is not the solution. The best long-term solution is to move Public Safety to 700 MHz. Unless Public Safety moves to "virgin" spectrum free from other land mobile: a) there always will be some interference from interleaved non-Public Safety; and b) 700 MHz is a one-time opportunity for a huge contiguous piece of spectrum to solve both its long-term capacity and its agency interoperability issues. Rebanding at 800 MHz could never solve either the long-term capacity or interoperability problems.
- Congressional legislation will be necessary to realize the 700 MHz solution, but it would also be needed for any stop-gap 800 MHz solution.

From a timing standpoint, 800 MHz is no more quickly implemented than 700 MHz. Neither can be implemented until additional funding is identified.

Even assuming that Nextel's \$500,000,000 commitment were sufficient (and even Nextel concedes it is insufficient), given the interplay between the Bankruptcy Act and the Communications Act (at least in the DC Circuit), there is no assurance the funds are there, unless and until they are actually deposited with the FCC.